IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARBUTUS BIOPHARMA CORPORATION AND GENEVANT SCIENCES GMBH, Plaintiffs, v. MODERNA, INC. and MODERNATX, INC. Defendants. EMANUEL MCCRAY, *On Behalf of Himself and All Others Similarly Situated,* Intervenors-Plaintiffs.	**Case No.: 22-cv-00252-MSG** **PROPOSED CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF**

I. INTRODUCTION

1. The Plaintiffs' Complaint was filed on February 28, 2022 (Doc. 1). On November 2, 2022, (Doc. 32), Judge Goldberg denied Moderna's motion to dismiss

and directed that: "Within fourteen (14) days from the date of this Order, Defendants shall file an answer to the Complaint."

2. On November 30, 2022, Moderna filed an Answer to Plaintiffs' Complaint, which was accompanied by a counterclaim against the Plaintiffs (Doc. 35).

3. On December 21, 2022, Plaintiffs filed an Answer to Defendants' counterclaim (DOC. 38). On February 14, 2023, the United States filed a Statement of Interest (Doc. 49). On February 16, 2023, Judge Goldberg filed an Order directing that: "Within fourteen (14) days from the date of this Order, the parties and the U.S. Government shall submit a letter of no more than ten pages regarding the impact of the Governments Statement of Interest on the scheduling of this matter." (Doc. 51).

4. The course of the existing litigation has been abruptly changed with Moderna's counterclaim and the statement of interest by the United States.

5. Emanuel McCray ("McCray"), Proposed Intervenor, respectfully pursues this proposed class action on behalf of himself and all other citizens of the United States similarly situated, as a class, pursuant to Rule 23 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.), our sovereign powers reserved to the People in the Tenth Amendment, and our power as a group acting as a class pursuant to *Bond v.*

United States, 572 U.S. 844, 853 (2014),[1] and *Califano v. Yamasaki,* 442 U.S. 682, 700, (1979).[2]

6. Proposed Intervenors-Plaintiffs seek a narrow declaration that Contract No. W911QY-20-C-0100 (the '-0100 Contract) and 28 U.S.C. § 1498 are unavailable for use by the United States and Moderna to shift Moderna's liability to the People of the United States for its infringements of Plaintiffs' patents and Moderna's liability for the safety and efficacy of the vaccine products made from these infringements.

II. JURISDICTION AND VENUE

7. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 2201 and 2202.

8. This Court has jurisdiction pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because: (i) the proposed class consists of well over 300,000,000 Members; (ii) the Members of the proposed Class are citizens of states different from Defendants' home states; and (iii) the aggregate amount in the controversy exceeds $5,000,000, exclusive of interest and costs, in a future suit related to this current action which only seeks declaratory relief.

[1] Holding that: "'An individual may 'assert injury from governmental action taken in excess of the authority that federalism defines.'"

[2] Holding that "class relief is appropriate in civil actions brought in federal court, including those seeking to overturn determinations of the departments of the Executive Branch of the Government in cases where judicial review of such determinations is authorized.... Indeed, a wide variety of federal jurisdictional provisions speak in terms of individual plaintiffs, but class relief has never been thought to be unavailable under them."

9. Pursuant to 28 U.S.C. § 1391(b)(1), venue is proper because the Defendants' principal places of business are located in the State of Delaware.

III. PARTIES

10. Plaintiff Arbutus Biopharma Corporation is a corporation organized and existing under the laws of Canada, with its principal place of business at 701 Veterans Circle, Warminster, Pennsylvania, 18974.

11. Plaintiff Genevant Sciences GmbH is a company organized and existing under the laws of Switzerland, with its principal place of business at Viaduktstrasse 8, 4051 Basel, Switzerland.

12. Defendant Moderna, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 200 Technology Square, Cambridge, MA 02139.

13. Defendant ModernaTX, Inc., a wholly owned subsidiary of Moderna, Inc. (collectively, "Moderna"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 200 Technology Square, Cambridge, MA 02139.

14. Intervenor-Plaintiff Emanuel McCray ("McCray") is a citizen of the United States and resides in the State of Washington. McCray served in the United States military as an Intelligence Officer, a Staff Counterintelligence Officer, a Human

Intelligence Officer, and as Commander of a Technical Surveillance Countermeasures Unit.

IV. FACTUAL ALLEGATIONS

15. Defendants conspired with agents of Biomedical Advanced Research and Development Authority ("BARDA") and agents of National Institute of Allergy and Infectious Diseases ("NIAID") to infringe Plaintiffs' patents, many months or even many years before executing a contract on or about August 11, 2020 when the United States granted Moderna, Inc. and ModernaTX, Inc. ("Moderna"), "authorization and consent" to manufacture and use inventions covered by United States patents under Contract No. W911QY-20-C-0100 (the '-0100 Contract).

16. On February 28, 2022, Plaintiffs filed suit seeking compensation for the use of the patented technology they claim to have developed. [Doc. 1]

17. On November 2, 2022, Judge Goldberg a Memorandum followed by an Oder denying Moderna's motion to dismiss and directing that: "Within fourteen (14) days from the date of this Order, Defendants shall file an answer to the Complaint." (Docs. 31 and 32, respectively).

18. On November 30, 2022, Moderna filed an Answer to Plaintiffs' Complaint, which was accompanied by a counterclaim against the Plaintiffs, which included an intent to shift liability infringement of Plaintiffs' patents to the United States. (Doc. 35).

19. On December 21, 2022, Plaintiffs filed an Answer to Defendants' counterclaim (Doc. 38).

20. On February 14, 2023, the United States filed its Statement of Interest in the litigation and is seeking an interpretation from this Court of 28 U.S.C. § 1498 which will allow the United States to shift liability for some of Defendants' unlawful infringing acts to the United States but not "all of Moderna's allegedly infringing activity as described in the Complaint." Statement of Interest at 1. (Doc. 49).

21. The argument of the United States contained its Statement of Interest is inconsistent with *Larson v. United States*, 26 Cl. Ct. 365, 369-370 (1992) (The infringing activity must have "occurred with the government's authorization or consent" and "[s]tatutory waivers of governmental immunity, such as are embodied in § 1498(a), must be narrowly construed." (Citations omitted).

22. Prior to execution of the "-0100 Contract" in August 2020, Defendants were already in the advanced stages of at least two clinical trials involving Plaintiffs' patents:

(1) A Study to Evaluate Efficacy, Safety, and Immunogenicity of mRNA-1273 Vaccine in Adults Aged 18 Years and Older to Prevent COVID-19. (Phase 3. July 14, 2020)
Sponsor: ModernaTX, Inc. Collaborators: Biomedical Advanced Research and Development Authority and National Institute of Allergy and Infectious Diseases (NIAID)

(2) Dose-Confirmation Study to Evaluate the Safety, Reactogenicity, and Immunogenicity of mRNA-1273 COVID-19 Vaccine in Adults Aged 18 Years and Older. (Phase 2. May 28, 2020)

> Sponsor: ModernaTX, Inc. Collaborator: Biomedical Advanced Research and Development Authority

23. On or about April 21, 2020, Anthony Fauci, Director of the NIAID, in an inter-agency communication, informed Francis Collins, Patricia Conrad, Renate Myles, Courtney Billet and John Burklow he was aware Bright had been removed from his work on vaccines with Moderna and Johnson and Johnson.

24. In its coverage of Rick Bright's reassignment published on April 21, 2020, CNBC news reported that:

> "BARDA was expected to play an even larger role in the coming months; Congress more than tripled BARDA's budget in the most recent coronavirus stimulus package. Already, the office has a role in some of the splashiest Covid-19 projects, including partnerships with Johnson & Johnson and Moderna Therapeutics, both of which are developing potential Covid-19 treatments.[3]

25. The CNBC news article exposed a conspiracy to usurp President Trump's authority and the authority of his HHS Secretary to procure products for the pandemic.

26. In or about 2015, Moderna applied for a European patent, "EP3134131B1", related to human coronavirus vaccines, specifically "nucleic acid vaccines" (NAVs) related to "ribonucleic acid (RNA) vaccines, *i.e*, mRNA vaccines":[4]

> "In the invention, the virus is a strain of Influenza A or Influenza B or combinations thereof. In some embodiments, the strain of Influenza A or Influenza B is associated with birds, pigs, horses, dogs, humans or

[3] Available from https://www.cnbc.com/2020/04/21/coronavirus-director-of-us-agency-key-to-helming-vaccine-development-leaves-role-suddenly.html.

[4] Available from https://patents.google.com/patent/EP3134131B1/en.

> non-human primates. In the invention, the antigenic polypeptide encodes a hemagglutinin protein or fragment thereof. In some embodiments, the hemagglutinin protein is H1, H2, H3, H4, H5, H6, H7, H8, H9, H10, H11, H12, H13, H14, H15, H16, H17, H18, or a fragment thereof.
> ***
> The vaccine of claim 1, wherein the infectious agent is a virus selected from the group consisting of H1N1, H3N2, H7N9, and H10N8."

27. The existence of four different "data" versions of the same China virus led to this confirmation in news reports. On or about December 11, 2020, Yasemin Saplakoglu ("Saplakoglu"), a writer for Live Science,[5] reported that the "COVID-19 vaccines developed by Pfizer and Moderna" were based on "data" supplied by Communist-controlled China:

> "On Jan. 10, Chinese researchers first published the genetic sequence ["data"] of the novel coronavirus on a preprint online; within a week, Weissman and his team at the University of Pennsylvania were already developing synthetic mRNA against the virus and both Moderna and Pfizer licensed this team's formulation from The University of Pennsylvania, according to a perspective posted on Sep. 3 in the journal JAMA. Within 66 days of the sequence ["data"] being published, Moderna, in collaboration with [Anthony Fauci's] National Institute of Allergy and Infectious Diseases, developed a vaccine and kickstarted the first U.S. clinical trial to test it against COVID-19."

28. On or about March 25, 2021, Jon Gertner of the New York Times also reported the vaccines were based on "data" from Communist China[6] and that the lack of specimens was correctable as a "software problem":

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[5] Yasemin Saplakoglu. *COVID-19 vaccines: The new technology that made them possible.* Live Science. December 11, 2020. Available from https://www.livescience.com/mrna-vaccines-future-vaccine-development.html.

[6] Jon Gertner. *Unlocking the Covid Code.* The New York Times. March 25, 2021. Available from https://www.nytimes.com/interactive/2021/03/25/magazine/genome-sequencing-covid-variants.html.

> "It's typically the case, for instance, that a pharmaceutical company needs samples of a virus to create a vaccine. But once the sequence ["data"] was in the public realm, Moderna, an obscure biotech company in Cambridge, Mass., immediately began working with the National Institutes of Health on a plan. 'They never had the virus on site at all; they really just used the sequence ["data"], and they viewed it as a software problem,' Francis deSouza, the chief executive of Illumina, which makes the sequencer that [Yong-Zhen[7]] Zhang used, told me with some amazement last summer, six months before the Moderna vaccine received an emergency-use authorization by the Food and Drug Administration. The virus's code ["data"] also set the testing industry into motion. Only by analyzing characteristic aspects of the virus's genetic sequence ["data"] could scientists create kits for the devices known as P.C.R. machines, which for decades have used genetic information ["data"] to formulate fast diagnostic tests."

29. Stated differently, Moderna was in the process of receiving an emergency-use authorization from the Food and Drug Administration months before executing "the -0100 Contract".

30. Researchers have been studying and working with mRNA vaccines for more than 60 years after the mRNA molecule was first described by S. Brenner and his colleagues in 1961.[8]

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[7] *Severe acute respiratory syndrome coronavirus 2 isolate Wuhan-Hu-1, complete genome.* GenBank No. MN908947.3. Available from https://www.ncbi.nlm.nih.gov/nuccore/MN908947.3; Wu F, Zhao S, Yu B, et al. A new coronavirus associated with human respiratory disease in China [published correction appears in Nature. 2020 Apr;580(7803):E7]. Nature. 2020;579(7798):265-269. doi:10.1038/s41586-020-2008-3. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7094943/.

[8] BRENNER S, JACOB F, MESELSON M. *An unstable intermediate carrying information from genes to ribosomes for protein synthesis.* Nature. 1961 May 13;190:576-581. doi: 10.1038/190576a0. PMID: 20446365. Available from https://pubmed.ncbi.nlm.nih.gov/20446365/; https://www.nature.com/articles/190576a0. See, Fang E, Liu X, Li M, Zhang Z, Song L, Zhu B, Wu X, Liu J, Zhao D, Li Y. *Advances in COVID-19 mRNA vaccine development.* Signal Transduct Target Ther. 2022 Mar 23;7(1):94. doi: 10.1038/s41392-022-00950-y. PMID: 35322018; PMCID: PMC8940982. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8940982/.

31. In 1987, Dr. Robert Wallace Malone and colleagues successfully employed cationic lipids to encapsulate mRNA for injection into eukaryotic cells, resulting in a highly efficient system for the expression of mRNA in vitro.[9]

32. In or about 2015, Moderna proved its ability to deliver vaccines when Moderna delivered the "first-in-human dose of an mRNA vaccine (mRNA-1440), an H10N8 flu vaccine candidate",[10] without infringing Plaintiffs' patents.

33. Plaintiffs alleged in their Complaint:

> "Moderna brought its vaccine from lab bench to arms in record speed. That unprecedented accomplishment was made possible by Moderna's use of breakthrough technology Arbutus had already created and patented—a revolutionary lipid nanoparticle ("LNP") delivery platform that took the scientists of Arbutus years of painstaking work to develop and refine. Moderna was well aware of Arbutus's LNP patents and licensed them for other product programs, but it chose not to do so for its COVID-19 vaccine." *Id.* ¶ 1.

> "Without adequate protection, mRNA quickly degrades in the body. For mRNA vaccines like Moderna's to work, they must incorporate a mechanism for protecting the fragile mRNA, delivering it through cell membranes, and then releasing it inside the cell. In the words of one Nobel Prize winning scientist, the secret for making RNA-based products work has always been "delivery, delivery, delivery. *Id.* ¶ 3.

34. In furtherance of the conspiracy to intentionally unleash a pandemic biological hoax against the People of the United States in violation of 18 U.S. Code §1038, Moderna chose not to seek licensing authority from Plaintiffs', as it had

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[9] Malone RW, Felgner PL, Verma IM. *Cationic liposome-mediated RNA transfection.* Proc Natl Acad Sci U S A. 1989 Aug;86(16):6077-81. doi: 10.1073/pnas.86.16.6077. PMID: 2762315; PMCID: PMC297778. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC297778/. See also: Nature. *The tangled history of mRNA vaccines* (September 14, 2021). Available from https://www.nature.com/articles/d41586-021-02483-w.

[10] Available from https://www.modernatx.com/about-us/our-story.

done in the past for other vaccines, as part of an effort to keep secret the planning for this alleged biological hoax, which coincides with Moderna's founding.

35. In furtherance of the 18 U.S. Code §1038 biological hoax conspiracy, Moderna has brought to market a very fragile vaccine that relies upon delivery vehicles secretly obtained through the infringement of Plaintiffs' patents. This in turn complicates the chain of product and Government tort liability associated with the Federal class tort claims filed by putative class member Jerzy Gruca ("Gruca"), HHS Administrative Tort Claim No. 2021-0064, Emanuel McCray, HHS Administrative Tort Claim No. 2020-1415,[11] and others, for *Marta Reyes, et al. v. Republic of China, et al.,* Class Action No. 20-cv-21108-AMC in the U.S. District Court for the Southern District of Florida (Miami), filed on March 12, 2020.

36. The Miami class action is currently on administrative hold to allow the Plaintiffs time to "Continue Service of Process Pursuant To The FSIA" against the Peoples Republic of China, *et al.* and to amend the Complaint by "expand[ing] the factual allegations of how the pandemic unfolded and how agents and actors of Defendants committed wrongful acts within the United States…since the research for the April 15th [2021] brief does appear to lead to additional U.S. based defendants who acted on behalf of or in aid of China to further the pandemic…." *Id.* ¶¶ 6-9.

[11] See Exhibit 3 to Intervenors' Complaint.

37. In its counterclaim, Moderna, citing a non-peer reviewed Preprint, alleged that: "On January 10, 2020, the genetic sequence of the SARS-CoV-2 virus became public." *Id.* ¶10.

38. The Preprint[12] cited by Moderna makes no reference to the full genome sequence of the SARS-CoV-2 virus which was first submitted by the Shanghai Public Health Clinical Center & School of Public Health, Fudan University, Shanghai, China to the U.S. National Institutes of Health (NIH) on January 5, 2020 as "Primary Locus Genome Sequence GenBank No. MN908947" (Severe acute respiratory syndrome coronavirus 2 isolate Wuhan-Hu-1, complete genome).[13]

39. On January 10, 2020, after the genome sequence was made public in GenBank, Eddie C. Holmes, an acquaintance of Anthony Fauci, posted a link to GenBank on the Virological.org website.[14]

40. On January 11, 2020, news of the genome sequence posted by Eddie C. Holmes was reported by Science Magazine.[15]

41. Moderna's Preprint named Barney S. Graham and Kizzmekia S. Corbett, Vaccine Research Center, NIAID and "Ralph S. Baric", University of North

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[12] *SARS-CoV-2 mRNA Vaccine Development Enabled by Prototype Pathogen Preparedness,* bioRvix.org, at 5–6 (June 11, 2020) ("Moderna/NIH Preprint"). Available from https://www.biorxiv.org/content/10.1101/2020.06.11.145920v1.full.

[13] Available from https://www.ncbi.nlm.nih.gov/nuccore/MN908947.

[14] Novel 2019 coronavirus genome. January 10, 2020. Available from https://virological.org/t/novel-2019-coronavirus-genome/319

[15] Jon Cohen. *Chinese researchers reveal draft genome of virus implicated in Wuhan pneumonia outbreak.* January 11, 2020. Available from https://www.sciencemag.org/news/2020/01/chinese-researchers-reveal-draft-genome-virus-implicated-wuhan-pneumonia-outbreak.

Carolina at Chapel Hill, among the authors, and Moderna and the following U.S.-based entities associated with the other authors:

A. Vaccine Research Center; National Institute of Allergy and Infectious Diseases; National Institutes of Health; Bethesda, Maryland, 20892
B. Moderna Inc., Cambridge, MA, 02139; United States of America
C. Department of Epidemiology; University of North Carolina at Chapel Hill; Chapel Hill, North Carolina, 27599
D. Department of Microbiology and Immunology, School of Medicine, University of North Carolina at Chapel Hill; Chapel Hill, North Carolina, 27599
E. National Institute of Allergy and Infectious Diseases; National Institutes of Health; Bethesda, Maryland, 20892
F. Department of Pediatrics, Vanderbilt University Medical Center, Nashville, Tennessee, 37212
G. Institute for Biomedical Sciences, George Washington University, Washington, DC 20052
H. Department of Molecular Biosciences; University of Texas at Austin; Austin, Texas, 78712
I. Biostatistics Research Branch, Division of Clinical Research, National Institute of Allergy and Infectious Diseases, National Institutes of Health; Bethesda, Maryland, 20892

42. Moderna's Preprint further acknowledged support and funding as follows:

"We thank Gabriela Alvarado, Karin Bok, Kevin Carlton, Masaru Kanekiyo, Robert Seder, and additional members of all included laboratories for critical discussions, advice, and review of the manuscript. We thank Judy Stein and Monique Young for technology transfer and administrative support, respectively. We thank members of the NIH NIAID VRC Translational Research Program for technical assistance with mouse experiments. This work was supported by the Intramural Research Program of the VRC and the Division of Intramural Research, NIAID, NIH (B.S.G) and NIH NIAID grant R01-AI127521 (J.S.M.). mRNA-1273 has been funded in part with Federal funds from the Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response, Biomedical Advanced Research and Development Authority, under Contract

> 75A50120C00034. PRNT assays were funded under NIH Contract HHSN261200800001E Agreement 17×198 (to J.D.C.), furnished through Leidos Biomedical Research, Inc. MERS mRNA mouse challenge studies were funded under NIH Contract HHSN272201700036I Task Rrder No. 75N93019F00132 Requisition No. 5494549 (to R.B.). K.S.C.'s research fellowship was partially funded by the Undergraduate Scholarship Program, Office of Intramural Training and Education, Office of the Director, NIH. D.R.M. was funded by NIH NIAID grant T32-AI007151 and a Burroughs Wellcome Fund Postdoctoral Enrichment Program Award."

43. NIH NIAID Grant No. T32-AI007151, referenced in Moderna's Preprint, is commonly associated with research conducted at the University of North Carolina at Chapel Hill and funded by the NIAID since at least 1985 under the "Project Narrative" titled "Infectious Disease Pathogenesis Research Training Program".[16]

44. This program, which "seeks to train postdoctoral trainees to conduct outstanding research in the fields of bacterial pathogenesis, immunology, virology and epidemiology of infectious disease pathogenesis", has cost taxpayers millions of dollars, and is the same funding mechanism used by Moderna to prepare a "prototype pathogen" for its COVID-19 vaccines.[17]

45. In its Preprint, Moderna provided the prototype pathogen timeline for its mRNA-1273's progression to clinical trial in 2020 which started back in 2013:[18]

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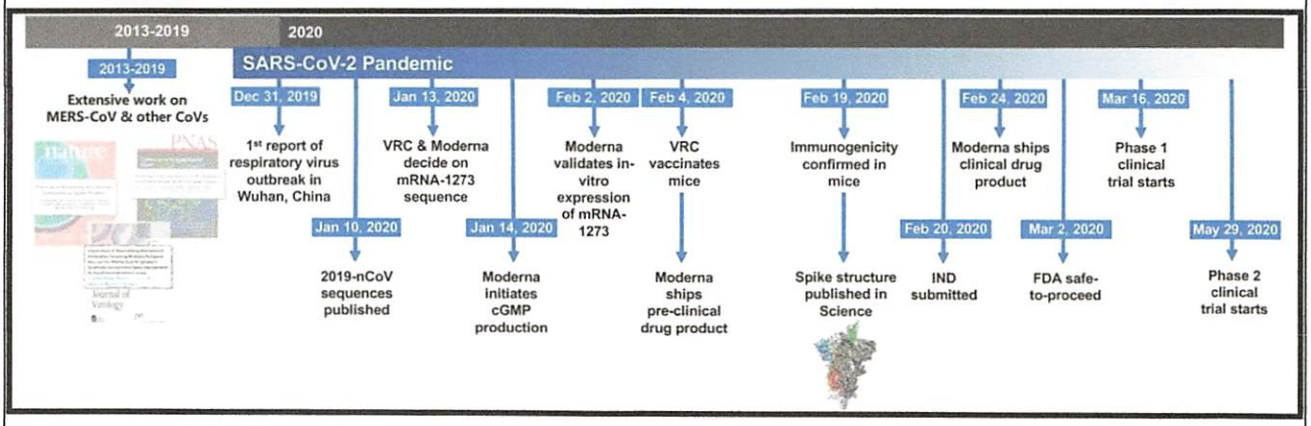
[16] Available from https://reporter.nih.gov/search/1DhNG2eJl0a_pl96ntZZrQ/projects.

[17] *Id.*

[18] Extended Data Figure 2 to "Moderna/NIH Preprint". Available from https://www.biorxiv.org/content/10.1101/2020.06.11.145920v1.full.pdf.



46. To state differently, Moderna claimed its COVID-19 vaccines are based on a "Prototype Pathogen": "This is fundamental to the prototype pathogen approach for pandemic preparedness".[19]

47. Moderna's "Prototype Pathogen" is a "critical component of the NIAID plan for pandemic preparedness" which was funded by Anthony Fauci while Director of the NIAID.[20]

48. Moderna's "Prototype Pathogen", which was revealed by the Biden Administration in September 2022,[21] directly supports the allegation that COVID-19 was a planned "infodemic" that violates 18 U.S. Code §1038.

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[19] *Id.* at 5, lines 73-74.

[20] Anthony Fauci, *et al., Prototype Pathogen Approach for Vaccine and Monoclonal Antibody Development: A Critical Component of the NIAID Plan for Pandemic Preparedness.* J Infect Dis. 2022 Jul 25:jiac296. doi: 10.1093/infdis/jiac296. Epub ahead of print. PMID: 35876700; PMCID: PMC9384504. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9384504/;

[21] See *First Annual Report on Progress Towards Implementation* of the American Pandemic Preparedness Plan ("The U.S. Government continues to expand its capabilities for development of next-generation COVID vaccines and vaccines against other high-priority viruses…utilizing the prototype pathogen approach…." Available from https://www.whitehouse.gov/wp-content/uploads/2022/09/09-2022-AP3-FIRST-ANNUAL-REPORT-ON-PROGRESS.pdf

49. Subsequent to Shanghai's January 5, 2020 report to the United States of the genome sequence for "SARS-CoV-2", the data underwent three unique revisions, manipulations, and or edits:[22]

> **Version 1.1: MN908947.1** (30473 bp ss-RNA).[23] *Wuhan seafood market pneumonia virus isolate Wuhan-Hu-1, complete genome, GenBank: MN908947.1;*
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> **Version 1.2: MN908947.2** (29875 bp ss-RNA).[24] *Wuhan seafood market pneumonia virus isolate Wuhan-Hu-1, complete genome GenBank: MN908947.2;* and
>
> **Version 1.3: GenBank No. MN908947.3** (29903 bp ss-RNA).[25] *Severe acute respiratory syndrome coronavirus 2 isolate Wuhan-Hu-1, complete genome, GenBank: MN908947.3.*

50. On February 24 and 25, 2023, McCray underwent urgent medical care from hospitals operated by the U.S. Department of Veteran Affairs ("DVA"). These hospitals had a policy in place mandating the wearing of masks that are known to the United States and the DVA to be incapable of preventing SARS-COV-2 infection and transmission.

51. The medical policies of President Biden's Administration directed the hospitals to disregard the vaccination status of patients and visitors and instead mandate masks.

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[22] See Exhibit 1 to Intervenors' Complaint, ¶¶ 168-197.
[23] Available from https://www.ncbi.nlm.nih.gov/nuccore/MN908947.1.
[24] Available from https://www.ncbi.nlm.nih.gov/nuccore/MN908947.2.
[25] Available from https://www.ncbi.nlm.nih.gov/nuccore/MN908947.

52. The intentional disregard of the vaccination status by the Biden Administration and State health officials demonstrates zero confidence in the safety and efficacy of all vaccines, including those manufactured by Moderna. This anti-vaccine policy unwittingly promotes "natural immunity", which in turn defeats the need to mandate vaccines, renders fatal Moderna's efforts to shift liability for its wrongdoings to the United States.

53. The current conflicting public health policies of the Biden Administration, the DVA and the States of Washington and Oregon, in centuries past, were shown to be responsible for General George Washington suffering defeat during his military campaign to capture the cities of Montréal and Quebec,[26] in the Province of Quebec, Canada[27] during the period 1775-1776. Fritz Hirschfeld contributed Washington's defeat directly to the health policies of General Washington and the "United Colonies":[28]

> "For approximately the first eighteen months of his command, however, Washington seemed committed to pursuing an anti-inoculation policy. He did so for several valid reasons. Many of the colonies had statutes on the books prohibiting inoculation and Washington, as a public figure, prided himself on obeying the law. As has been emphasized in previous chapters, public opinion itself was sharply divided, often very passionately, on the issue. Enlistments were

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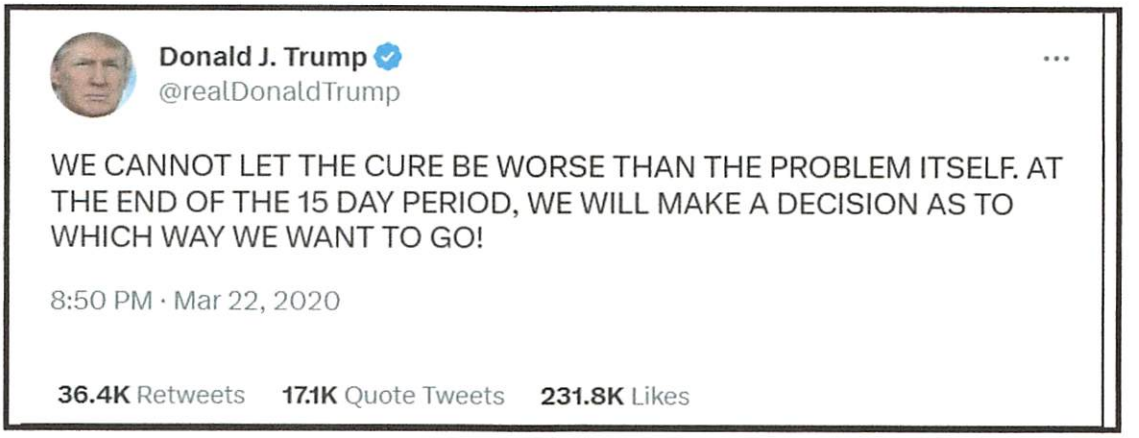
[26] Hirschfeld, Fritz, *"Smallpox, the Continental Army, and General Washington"* (1991). Dissertations, Theses, and Masters Projects. William & Mary. Paper 1539625695. https://dx.doi.org/doi:10.21220/s2-ecgj-sq04. Available from https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=4733&context=etd.

[27] The Province of Quebec was a colony in North America (1763-1791) created by Great Britain in 1763 after the Seven Years' War for world supremacy between Great Britain and France, two of the powers of the Earth at the time of the signing of the Declaration of Independence in 1776. Wikipedia. *Province of Quebec (1763–1791)*. Available from https://en.wikipedia.org/wiki/Province_of_Quebec_(1763%E2%80%931791).

[28] *Hirschfeld* at 55.

> dropping off; perhaps in part due to the smallpox scare. In New York in the spring and summer of 1776, sickness and disease had begun to take a serious toll of the men of the Continental Army…. The total number of sick was 8,528, more than a third of the army. A program of mandatory inoculation might well serve to worsen the medical crisis."

54. The fear that a "program of mandatory inoculation might well serve to worsen the medical crisis" in 1776, appears to coincide with President Trump's tweet in March 2020 cautioning against cures that would be worse than the China virus, such as mandating masking and vaccination in furtherance of a conspiracy designed to worsen the pandemic hoax, rather than make it better:[29]



55. In paragraph 42 of the Complaint, the Plaintiffs alleged Defendant Moderna had decided on the mRNA-1273 sequence" on January 13, 2020; "initiate[d] cGMP production" on January 14, 2020; shipped clinical drug product on February 24, 2020; "and, less than a month later, Phase I trials began."

56. The significance of Plaintiffs' allegation that a "clinical drug product" had been composed, shipped and entered into clinical trials between January 13, 2020

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[29] Available from https://twitter.com/realDonaldTrump/status/1241935285916782593.

and March 24, 2020 (71 days), is a warp speed not to be confused with or substituted for President Trump's Operation Warp Speed, which was officially announced on May 15, 2020.

57. Moderna's warp speed COVID-19 vaccines were manufactured and sold to benefit the Intervenors-Plaintiffs. The ingredients used in these warp speed COVID-19 vaccines directly affect the "significant protectable interest" of each of the targeted Intervenors-Plaintiffs. The United States has found that '[e]ach ingredient in a vaccine serves a specific purpose":

> "Help provide immunity (protection) against a specific disease[;]
> Help keep the vaccine safe and long lasting[; and]
> Be used during the production of the vaccine".[30]

58. Each of the three purposes observed by the United States involves a process or procedure where the failure to follow safety and efficacy guidelines could result in the recipient suffering one or more "adverse event of special interest" ("AESI"), which are lessons learned from previous vaccination programs, as was reported by Pfizer, Inc. to the U.S. Food and Drug Administration in April 2021.[31]

59. Intervenors-Plaintiffs' legally protectable interest in this litigation is partly derived from *Larson* ([m]edical care is provided for the benefit of the patient, not the government...." *Id.*, 26 Cl. Ct. at 369) and from Plaintiffs' detail facts in support

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[30] *Vaccine Ingredients.* Available from https://www.hhs.gov/immunization/basics/vaccine-ingredients/index.html.

[31] See Exhibit 2 to Intervenors' Complaint.

of their allegations that the Defendants operated at warp speed to develop vaccines that used Plaintiffs' delivery vehicles without lawful permission.

60. Through the "powers" reserved to the People under the Tenth Amendment, each individual is constitutionally recognized as the primary enforcement and regulatory authority regarding their individual medical care.

61. The significance of these reserved "powers" can be observed from the AESIs reported by Pfizer, Inc., which uses mRNA technology in its vaccines similar to Moderna's mRNA vaccines, and Colgate-Palmolive's recent "voluntary recall" of its "Fabuloso Multi-Purpose Cleaners", which were reported to present the following hazards, safety and health risks:[32]

> "Fabuloso® is voluntarily recalling some of our Multi-Purpose Cleaners made in the United States because a preservative was not added at the intended levels during manufacturing. With inadequate preservative, there is a risk of bacteria growth in the recalled products. Therefore, the recalled products can contain Pseudomonas species bacteria, including Pseudomonas aeruginosa and Pseudomonas fluorescens, which are environmental organisms found widely in soil and water. People with weakened immune systems, external medical devices, or underlying lung conditions who are exposed to the bacteria face a risk of serious infection that may require medical treatment. The bacteria can enter the body if inhaled, through the eyes, or through a break in the skin. People with healthy immune systems are usually not affected by the bacteria."

62. The United States has long known "Pseudomonas species bacteria":[33]

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[32] Voluntary Recall of Select Fabuloso® Products Made In the United States. Available from https://www.fabuloso.com/recall.

[33] *Pseudomonas aeruginosa: Opportunistic pathogen.* Available from https://www.ncbi.nlm.nih.gov/genome/?term=Pseudomonas%20aeruginosa%5BOrganism%5D&cmd=DetailsSearch

> "[A]re common inhabitants of soil and water and can also be found on the surfaces of plants and animals…. This organism is an opportunistic human pathogen. While it rarely infects healthy individuals, immunocompromised patients, like burn victims, AIDS-, cancer- or cystic fibrosis-patients are at increased risk for infection with this environmentally versatile bacteria…. The bacterium is naturally resistant to many antibiotics and disinfectants, which makes it a difficult pathogen to treat."
> Common reservoirs of *Pseudomonas* bacteria in urban communities include "hot tubs, jacuzzis, and swimming pools…. Reservoirs in the hospital setting include potable water, taps, sinks, toothbrushes, icemakers, disinfecting solutions, sanitizers, soap bars, respiratory therapy equipment, endoscopes, and endoscope washers."[34]

63. The adverse effects of defective Fabuloso Multi-Purpose Cleaners are shown here compared to the AESIs from COVID-19 vaccinations:

FABULOSO® RECALL	COVID-19 VACCINATION AESI
Endocarditis	Reported as Subacute endocarditis; and Lupus endocarditis
Meningitis	Reported as "Neurological AESIs" including: Meningitis; Meningitis aseptic; and Meningitis herpes, where at least three cases of "meningitis" were reported among the "relevant" clinical trial participants.
Pruritic Rash	Reported as "rash pruritic"

[34] Wilson MG, Pandey S. *Pseudomonas Aeruginosa.* [Updated 2022 Aug 28]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2022 Jan-. Available from: https://www.ncbi.nlm.nih.gov/books/NBK557831/. See also Iglewski BH. *Pseudomonas.* In: Baron S, editor. Medical Microbiology. 4th edition. Galveston (TX): University of Texas Medical Branch at Galveston; 1996. Chapter 27. Available from: https://www.ncbi.nlm.nih.gov/books/NBK8326/; Reynolds D, Kollef M. *The Epidemiology and Pathogenesis and Treatment of Pseudomonas aeruginosa Infections: An Update.* Drugs. 2021 Dec;81(18):2117-2131. doi: 10.1007/s40265-021-01635-6. Epub 2021 Nov 7. PMID: 34743315; PMCID: PMC8572145. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8572145/; Bassetti M, Vena A, Croxatto A, Righi E, Guery B. *How to manage Pseudomonas aeruginosa infections.* Drugs Context. 2018 May 29;7:212527. doi: 10.7573/dic.212527. PMID: 29872449; PMCID: PMC5978525. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5978525/.

Axillary Lymphadenopathy	Reported as "lymphadenopathy", which is the swelling of lymph nodes.[35]
Osteomyelitis	Reported as Chronic recurrent multifocal osteomyelitis. Osteomyelitis is a serious infection of the bone that can be either acute or chronic. It is an inflammatory process involving the bone and its structures caused by pyogenic organisms that spread through the bloodstream, fractures, or surgery.[36]
Pneumonia	Reported as Atypical pneumonia; COVID-19 pneumonia; Embolic pneumonia; Enterobacter pneumonia; Haemorrhagic pneumonia; Herpes simplex pneumonia; Idiopathic interstitial pneumonia; Miliary pneumonia; Neonatal pneumonia; Paracancerous pneumonia; Pneumonia; Pneumonia adenoviral; Pneumonia cytomegaloviral; Pneumonia herpes viral; Pneumonia influenzal; Pneumonia measles; Pneumonia mycoplasmal; Pneumonia necrotising; Pneumonia parainfluenzae viral; Pneumonia respiratory syncytial viral; Pneumonia viral; Post procedural pneumonia; and Post procedural pneumonia.[37]
Otitis Externa	Reported as Herpes simplex otitis externa.

[35] Maini R, Nagalli S. *Lymphadenopathy*. [Updated 2022 Aug 8]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2022 Jan-. Available from: https://www.ncbi.nlm.nih.gov/books/NBK558918/.

[36] Momodu II, Savaliya V. *Osteomyelitis*. [Updated 2022 May 12]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2022 Jan-. Available from: https://www.ncbi.nlm.nih.gov/books/NBK532250/.

[37] "There were 4 individuals in the anaphylaxis evaluation who died on the same day they were vaccinated. Although these patients experienced adverse events (9) that are potential symptoms of anaphylaxis, they all had serious underlying medical conditions, and one individual appeared to also have COVID-19 pneumonia, that likely contributed to their deaths". See Exhibit 2 at page 10 (Table 1) to Intervenors-Plaintiffs' Complaint.

64. Recently, a number of studies have reported activation or reactivation of viruses and diseases in humans following COVID-19 vaccination. The vaccines involved Moderna's mRNA-1273 anti-COVID-19 vaccine; AstraZeneca's vaccine ChAdOx1 nCoV-19; Pfizer/BIONTECH mRNA-based vaccine BNT162b2; and Johnson and Johnson COVID-19 Ad26.COV2.S,[38] all of which were documented in Pfizer's AESI report to the United States on or about April 30, 2021. See Exhibit 2, Appendix 1 to Intervenors' Complaint.

65. Pfizer also informed the United States in its report of AESIs that its vaccine was capable of activating or reactivating the "1p36 deletion syndrome", which is a chromosome disorder that typically causes severe intellectual disability. Other features include a small head; vision and hearing problems; abnormalities of the skeleton, heart, gastrointestinal system, kidneys, or genitalia; and distinctive facial features.[39]

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[38] (1) Saraiva AL, Vieira AR, Marinho MC, Zadorozhnya O. *Varicella zoster virus reactivation following COVID-19 vaccination: a report of 3 cases.* Fam Pract. 2022 Sep 24;39(5):939-942. doi: 10.1093/fampra/cmac014. PMID: 35244157; PMCID: PMC8903443. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8903443/;
(2) Agrawal S, Verma K, Verma I, et al. (May 21, 2022) *Reactivation of Herpes Zoster Virus After COVID-19 Vaccination: Is There Any Association?.* Cureus 14(5): e25195. doi:10.7759/cureus.25195. Available from https://www.cureus.com/articles/94568-reactivation-of-herpes-zoster-virus-after-covid-19-vaccination-is-there-any-association#!/;
(3) Garg RK, Paliwal VK. *Spectrum of neurological complications following COVID-19 vaccination.* Neurol Sci. 2022 Jan;43(1):3-40. doi: 10.1007/s10072-021-05662-9. Epub 2021 Oct 31. PMID: 34719776; PMCID: PMC8557950. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8557950/;
(4) Herzum A, Trave I, D'Agostino F, Burlando M, Cozzani E, Parodi A. Epstein-Barr virus reactivation after COVID-19 vaccination in a young immunocompetent man: a case report. Clin Exp Vaccine Res. 2022 May;11(2):222-225. doi: 10.7774/cevr.2022.11.2.222. Epub 2022 May 31. PMID: 35799871; PMCID: PMC9200649. Available from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9200649/.

[39] Available from https://rarediseases.info.nih.gov/diseases/6082/chromosome-1p36-deletion-syndrome.

66. To meet the false demands of the pandemic, the U.S. Department of Veterans postponed McCray's pre-pandemic surgery, which resulted in McCray being later diagnosed with "Acute Kidney Injury", which is among the hundreds of AESIs following vaccination with Pfizer's COVID-19 vaccines.

67. Moderna has not disclosed the fact that it uses a "prototype pathogen" and not the virus associated with SARS-COV-2 that is on the public record as causing the pandemic. Without disclosing its recipe, Moderna is able to effectively conceal its liabilities for its COVID-19 vaccines among injuries caused by defective household cleaners; postponement of surgeries; mandatory wearing of masks; fear and anxiety; and propaganda and information and psychological warfare.

68. The United States has provided this Court no evidence it knew of, or even ratified the Defendants' conspiracy with the Directors of BARDA and NIAID (Rick Bright and Anthony Fauci, respectively,) to infringe Plaintiffs' patents using the NIAID's "Prototype Pathogen" funding mechanism.

69. The United States has also provided this Court no evidence to support its Executive policies mandating masking in all "healthcare settings" regardless of vaccination status. Without such evidence, it becomes completely impossible for the United States to have authorized or given its consent to infringe Plaintiffs' patents.

V. CLASS ACTION ALLEGATIONS

70. This class action meets the prerequisites mandated by Fed. R. Civ. P. 23(a) and Local Rule 23.1.

A. **Numerosity**: The proposed class includes all citizens of the United States, approximately 334,000,000. Excluded are the Defendants, the Judiciary and their families and employees, and the District of Columbia. There are no subclasses, though some citizens might prefer not to have violations of their constitutional rights remedied and may choose to exclude themselves from this litigation.

B. **Commonality**: All putative class members have rights guaranteed under the Federal Constitution and certain "powers" reserved to them under the Tenth Amendment. A sole discreet legal question all putative Plaintiffs-Intervenors share is whether Moderna and the United States may shift Moderna's liabilities for its infringements of Plaintiffs' patents to the People of the United States.

C. **Typicality**: The loss of constitutional sovereignty and powers reserved to the People of the United States is typical of the putative class. Because McCray is a citizen of the United States and is among the "people" to whom the Tenth Amendment reserves "powers not delegated to the United States by the Constitution, nor prohibited by it to the States", McCray has Article III standing to pursue the class claims under the typicality requirements of Rule 23.

D. **Fair and Adequate Representation**: McCray is a citizen of the United States. The Federal Constitution applies equally to each citizen of the United States, and the States were accepted into the Union on equal footing. There are no formal or personal conflicts of interests between McCray, the putative class members, and the claim McCray seeks to pursue. It is also not fatal if some members of the class might prefer not to have violations of their constitutional rights remedied.

71. This action can be maintained as a class action under Fed. R. Civ. P. 23(b) because Federal constitutional rights guaranteed to individuals are undifferentiated in every State of the Union.

VI. FIRST CAUSE OF ACTION
(Declaratory Relief)

72. Intervenors repeat, reiterate and reallege each and every allegation of the preceding paragraphs as if set forth herein, verbatim and fully at length.

73. Defendants, in their counterclaim, seek to shift their undescribed liability for their infringements of Plaintiffs' patents to the United States.

74. The United States seeks to accept liability for Defendants' undescribed liability, but which is "limited to the '-0100 Contract and does not extend to all of Moderna's allegedly infringing activity as described in the Complaint."

75. In their counterclaim, the Defendants admit there is more to their infringement of Plaintiffs' patents than the infringement itself, thus necessitating the need to shift liability to the United States.

76. In its Statement of Interest, the United States admit there is more to their willingness to accept liability for Defendants' undescribed liability, but with limitations the United States has refused to fully describe and define.

77. Federal courts may decline jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201(a), while keeping in mind that the idea behind the Declaratory Judgment Act was to clarify legal relationships so that plaintiffs and possibly defendants could make responsible decisions about the future. See *Rarick v. Federated Serv. Ins. Co.,* 852 F.3d 223, 227 (3d Cir. 2017) and *Step-Saver Data Sys., Inc. v. Wyse Tech.,* 912 F.2d 643, 649 (3d Cir. 1990), respectively.

78. Declaratory relief is very important to millions of Americans and this Court. The real "SARS-COV-2" virus, if it exists, was never used to manufacture Moderna's COVID-19 vaccines, or the COVID-19 vaccines of others. The entire world narrative is based on detection and transmission of the disease, COVID-19, and not transmission and detection of the virus, SARS-COV-2.

79. The World Health Organization has expressed the COVID-19 disease narrative as follows: "Globally, as of 4:24pm CET, 21 February 2023, there have been 757,264,511 confirmed cases of COVID-19, including 6,850,594 deaths".[40] The WHO makes no attempt to capture confirmed cases of the virus, SARS-COV-2, that is responsible for causing COVID-19.

[40] Available from https://covid19.who.int/.

80. The WHO expressed the same disease narrative for the United States: "[T]here have been 101,752,396 confirmed cases of COVID-19 with 1,106,783 deaths",[41] or one percent of the confirmed cases, with 99% surviving the disease, or 0.3% of the U.S. population. Mathematically, the SARS-COV-2 virus was not as deadly as the narrative claimed if the virus really existed.

81. The United States Intelligence Community ("USIC") reported on two occasions that:[42]

> "[T]hey will be unable to provide a more definitive explanation for the origin of COVID-19 unless new information allows them to determine the specific pathway for initial natural contact with an animal or to determine that a laboratory in Wuhan was handling SARS-CoV-2 or a close progenitor virus before COVID-19 emerged."
>
> "The IC—and the global scientific community—lacks clinical samples or a complete understanding of epidemiological data from the earliest COVID-19 cases. If we obtain information on the earliest cases that identified a location of interest or occupational exposure, it may alter our evaluation of hypotheses."

82. The inability of the USIC to provide a more definitive explanation for the origin of "SARS-CoV-2" and its lack of clinical samples of "SARS-CoV-2", converts the pandemic into a coronavirus that was already present in the body individuals. This is so because the narrative incorporates the virus into the disease.

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[41] Available from https://covid19.who.int/region/amro/country/us.

[42] *Unclassified Summary of Assessment on COVID-19 Origins.* Office of the Director of National Intelligence. August 27, 2021. Available from https://www.dni.gov/files/ODNI/documents/assessments/Unclassified-Summary-of-Assessment-on-COVID-19-Origins.pdf; *Declassified Assessment on COVID-19 Origins.* Office of the Director of National Intelligence. October 29, 2021. Available from https://www.dni.gov/index.php/newsroom/reports-publications/reports-publications-2021/item/2263-declassified-assessment-on-covid-19-origins; https://www.dni.gov/files/ODNI/documents/assessments/Declassified-Assessment-on-COVID-19-Origins.pdf.

83. As of February 17, 2023, the CDC's Vaccine Adverse Event Reporting System ("VAERS"), known as "CDC WONDER", has recorded 7,304 deaths[43] following the administering of Moderna's COVID-19 vaccines which are made using a "prototype pathogen". See Intervenors' Exhibit 4 for random descriptions of what appears to be extremely horrible deaths.

84. The individual identified under VAERS ID No. 0949630-1, was a 98 years-old female who lived in a nursing home in Hawaii. The individual received Moderna's COVID-19 vaccine as part of a "facility vaccination campaign."[44]

85. The individual identified under VAERS ID No. 0915880-1, was a 99 years-old male who lived in Montana and died within 12 hours of receiving Moderna's COVID-19 vaccine.[45]

86. As of February 17, 2023, the CDC's Vaccine Adverse Event Reporting System ("VAERS"), known as "CDC WONDER", has recorded 7,540 deaths

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[43] Available from https://wonder.cdc.gov/.

[44] United States Department of Health and Human Services (DHHS), Public Health Service (PHS), Centers for Disease Control (CDC) / Food and Drug Administration (FDA), Vaccine Adverse Event Reporting System (VAERS) 1990 - 02/17/2023, CDC WONDER On-line Database. Accessed at http://wonder.cdc.gov/vaers.html on Feb 26, 2023 2:33:05 PM. Available from https://wonder.cdc.gov/controller/datarequest/D8;jsessionid=2D2ACA915CB335339B87DBE7AE6A.

[45] United States Department of Health and Human Services (DHHS), Public Health Service (PHS), Centers for Disease Control (CDC) / Food and Drug Administration (FDA), Vaccine Adverse Event Reporting System (VAERS) 1990 - 02/17/2023, CDC WONDER On-line Database. Accessed at http://wonder.cdc.gov/vaers.html on Feb 26, 2023 2:50:24 PM. Available from https://wonder.cdc.gov/controller/datarequest/D8;jsessionid=618BEB236EC36FA95AB646E75300.

following the administering of Pfizer-BioNTech COVID-19 vaccines.[46] The deaths were similarly horrific in comparison to Moderna's COVID-19 vaccines.

87. In or about April 2020, the United States, through the HHS and the CDC, instructed public health authorities using the National Vital Statistics System ("NVSS"), to intentionally falsify the standard Death Certificates to include "COVID-19" deaths by: (1) eliminating SARS-CoV-2 infection as the "UNDERLYING CAUSE OF DEATH"; (2) requiring the "MANNER OF DEATH" be listed as "Natural"; and (3) eliminating the need for a COVID-19-related autopsy/pathologist when completing the COVID-19 Death Certificate. See Intervenor's Exhibit 1, ¶¶ 132-137.

88. In April 2020, Minnesota Dr. Scott M. Jensen, M.D. informed "The Ingraham Angle" that the CDC created these new guidelines to require doctors to falsely certify whether a patient has died of coronavirus.[47] In some cases, Dr. Jensen and other doctors were being "incentivized" to mislead the public about the true cause of death being reported on the death certificate.[48]

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[46] United States Department of Health and Human Services (DHHS), Public Health Service (PHS), Centers for Disease Control (CDC) / Food and Drug Administration (FDA), Vaccine Adverse Event Reporting System (VAERS) 1990 - 02/17/2023, CDC WONDER On-line Database. Accessed at http://wonder.cdc.gov/vaers.html on Feb 26, 2023 3:34:54 PM. Available from https://wonder.cdc.gov/controller/datarequest/D8;jsessionid=6DFA1B13A66B153E2C9189BBF1F1.

[47] Charles Creitz. *Minnesota doctor blasts 'ridiculous' CDC coronavirus death count guidelines.* Fox News. April 9, 2020. Available from https://www.foxnews.com/media/physician-blasts-cdc-coronavirus-death-count-guidelines.

[48] Trump Genius. *Incentives Given To Falsify Covid Death Certificates.* Available from https://truthsocial.com/@trumpgenius/posts/109932397653355923.

89. On January 23, 2023, Dr. Jensen was notified by the Minnesota Attorney General's Office that the Minnesota Board of Medical Practice ("MBMP") was pursuing allegations against him that could lead to the loss of his medical license for informing the public about the falsification of death certificates. Among the MBMP's allegations were the following:[49]

> a. Respondent promulgated disinformation regarding the COVID-19 pandemic, advised against vaccines and masks, including calling for civil disobedience among Minnesotans and businesses to ignore vaccine and mask guidance, and gave advice that promotes the transmission of COVID-19.
> ***
> c. Respondent promoted conspiracy theories alleging the Minnesota Department of Health instructed providers to falsify death certificates to list COVID-19 as the cause of death, whether or not the patient's underlying or contributing cause of death was COVID-19, when Minnesota was following federal guidance as a measure to better define the scope of the pandemic. Respondent was also "very publicly minimizing" and "deliberately downplaying" COVID-19 deaths.

90. Stated differently, the Minnesota Board of Medical Practice confirmed Dr. Jensen was being truthful about the falsification of COVID-19 Death Certificates.

91. Citing *Larson v. United States,* 26 Cl. Ct. 365 (Cl. Ct. 1992) and *Toxgon Corp. v. BNFL, Inc.,* 312 F.3d 1379 (Fed. Cir. 2002), this Court has already resolved in its November 2022 Memorandum (Doc. 31), to dispose of the § 1498(a) dispute "by summary judgment rather than on a motion to dismiss" because "[s]uch an issue cannot be resolved without some inquiry into the full and complete terms of

[49] Before the Minnesota Board of Medical Practice. *In the Matter of the Medical License of Scott M. Jensen, M.D.* Available from https://truthsocial.com/@trumpgenius/posts/109932886707526310.

the contract regarding compensation for the vaccine, the parties' negotiations, and the parties' understandings as to the precise beneficiaries."

92. As paragraphs 67-79, *supra,* informs, there are numerous potential issues associated with Moderna's COVID-19 "prototype pathogen" vaccines and the liabilities Moderna and the United States seek to place on the backs of the People.

93. Most importantly is whether Moderna knew its vaccines were possible weapons of premeditated murder and death; whether Moderna was involved in vaccinating the sick, the unhealthy, the elderly and other at-risk populations **before** infringing Plaintiffs' patents; and whether such knowledge and its associated liabilities can be constitutionally assumed by the United States.

94. Accordingly, the Intervenors-Plaintiffs are entitled to seek a declaration that Moderna's failure to procure a contract for production of its COVID-19 "prototype pathogen" vaccines **before** infringing Plaintiffs patents, precludes and prevents Moderna and the United States from shifting Moderna's liabilities for infringing Plaintiffs' patents to the United States and the People of the United States, where Moderna's infringements were designed to conceal planning for the commission of premeditated murder of the elderly and other at risk populations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs-Intervenors respectfully request that this Court enter declaratory judgment in their favor against Moderna and the United States and grant the following relief:

A. A judgment that Moderna and the United States may not shift Moderna's liability for infringing Plaintiffs' patents to the United States through the use of Contract No. W911QY-20-C-0100 (the '-0100 Contract) and 28 U.S.C. §1498.

B. Such other and further relief as this court may deem just and proper.

JURY DEMAND

Intervenors-Plaintiffs hereby demand a trial by jury on all claims so triable in this action.

CERTIFICATION AND CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will

likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I further agree to provide the Clerk's Office with any changes to my address where case–related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: February 26, 2023

Emanuel McCray

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